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11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA

13 IN THE MATTER OF THE EXTRADITION  
14 OF DAWID TOMASZ WOZNIAK TO THE  
15 REPUBLIC OF POLAND

Case No.: 2:22-MJ-00028-KJN-1

16  
17 DEFENDANT'S MEMORANDUM IN  
OPPOSITION OF CERTIFICATION OF  
EXTRADITION AND RESPONSE TO  
GOVERNMENT'S MEMORANDUM

18 Defendant Dawid Tomasz Wozniak, by and through his counsel of record, Joseph Abrams  
19 and Ryan T. Okabe, hereby files Defendant's Memorandum in Opposition of Certification of  
20 Extradition and Response to Government's Memorandum in the above-titled matter.

22 Dated: May 31, 2022

*/s/ Joseph Abrams*  
Joseph Abrams

24 Dated: May 31, 2022

*/s/ Ryan T. Okabe*  
Ryan T. Okabe  
25 Attorneys for Defendant

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L.

## INTRODUCTION

Defendant Dawid Tomasz Wozniak (hereinafter “Mr. Wozniak” or “Dawid”) appears before this Court for an extradition hearing following the Republic of Poland’s request for his extradition for prosecution on one count of causing grievous bodily harm resulting in death, in violation of Article 156 § 3 of the Criminal Code of Poland, for his alleged participation in an assault on Andrzej Malinowski.

The government bears the burden of proving that Mr. Wozniak's extradition should be certified. Before Mr. Wozniak's extradition can be certified, the government must establish the following five elements:<sup>1</sup>

1. The Court is authorized to conduct the extradition hearing;
2. The Court has jurisdiction over Mr. Wozniak;
3. An extradition treaty is in place between the Republic of Poland and the United States;
4. The charged conduct is an extraditable offense; and
5. The charged offense is supported by probable cause

Mr. Wozniak does not contest that the first four elements required for certification our met in this case. That is, the Court is authorized to conduct the hearing, the Court has jurisdiction over Mr. Wozniak, an extradition treaty is in place between the Republic of Poland (hereinafter “Poland”) and the United States, and the charged conduct is an extraditable offense. Mr. Wozniak,

<sup>1</sup> 18 U.S.C. § 3184; *Fernandez v. Phillips*, 268 U.S. 311, 312 (1925); *Ordinola v. Hackman*, 478 F.3d 588, 608 (4<sup>th</sup> Cir.).

1 however, vigorously disputes that there is sufficient evidence to support a finding of probable  
2 cause as to the charged offense.

3 Mr. Wozniak provides this memorandum to assist the Court in making its determination  
4 on whether there is sufficient evidence to support a finding of probable cause as to the charged  
5 offense and, hence, whether or not to certify Mr. Wozniak's extradition. After careful analysis and  
6 consideration of all relevant legal and factual matters in this case, Mr. Wozniak respectfully  
7 submits that the Court should *not* certify his extradition for the reasons set forth in this  
8 memorandum.

10 **II.**

11 **POLAND'S REQUEST FOR EXTRADITION**

13 **A. Statement of Facts (ECF No. 1 pg. 34,35)**

14 The following alleged facts are contained in the request for extradition:

15 Dawid Tomasz Wozniak and his friends, Marek Szymanski, Arkadiusz  
16 Bronislawski, Piotr Clunielewski and Mariusz Kozlowski came to Orudusk  
17 on 24th December 2007 at approximately 23:00 hours. They all has lmown  
18 [sic] each other and were friends. They had often visited each other at home.

19 They came to that place without any specific purpose. Earlier that day they  
20 drank together approximately 3 half-litre bottles of vodka and very [sic]  
21 driving cars in several places.

22 In Grudusk, they stopped at a parking place next to a shopping pavilion.  
23 Dawid Tomasz Wozniak came by a Fiat 126P car together with Arkadiusz  
24 Bronislawski, which was driven by Mariusz Kozlowski. Piotr Chmielewski  
25 and Marek Szymanski came by another car. Dawid Tomasz Wozniak was  
26 wearing a light short-sleeve shirt.

27 At a certain moment, Dawid Tomasz Wozniak got out of Mariusz  
28 Kozlowski's car, took out a wooden stick from the boot and came over to  
another car parked there in which a man unidentified so far was sitting. Then,  
without any reason, Dawid Tomasz Wozniak opened the door of the car and  
started tugging the man in the car. His behavior was very aggressive,  
Mariusz Kozlowski intervened during this incident and pulled Dawid  
Tomasz Wozniak away from that place.

1 Then Dawid Tomasz Wozniak, holding the wooden stick in his hand, went  
2 towards the stadium located at Marii Konopnickiej street in Grudusk. Marek  
3 Szymanski got out of Piotr Chmielewski's car and followed Dawid Tomasz  
4 Wozniak. The other friends of Dawid Tomasz Wozniak stayed next to their  
5 cars.

6 At that time, Szymon Rutkowski was in the company of Katmzyna  
7 Grodecka and Karolina Rudnicka next to the building at 4 Marii  
8 Konopnickiej street. They were waiting for Ewelina Rutkowska, who had  
9 gone home to take her hats and gloves.

10 Marek Szymanski and Dawid Tomasz Wozniak approached Szymon  
11 Rutkowski. When Katarzyna Grodecka saw this, she ran away. Then Dawid  
12 Tomasz Wozniak was the first to hit Szymon Rutkowski with the wooden  
13 stick in his back. Then Karolina Rudnicka followed Karolina Grodecka.  
14 When Szymon Rutkowski got the blow, he bent and shielded his face with  
15 his hands. Then he was struck again and again in his back with the wooden  
16 stick by Dawid Tomasz Wozniak, while Marek Szymanski was kicking him  
17 in his arms and chest.

18 At that time, Andrzej Malinowski was walking on the pavement along  
19 Konopnickiej street close to them. When he saw what was happening, he  
20 asked Marek Szymanski and Dawid Tomasz Wozniak what they wanted  
21 from Szymon Rutkowski. Then Marek Szymanski and Dawid Tomasz  
22 Wozniak approached Andrzej Malinowski, Dawid Tomasz Wozniak  
23 immediately hit him with the stick in his head, and Marek Szymanski was  
24 kicking Andrzej Malinowski in his chest. Andrzej Malinowski fell down on  
25 his back, Dawid Tomasz Wozniak and Marek Szymanski ran away from  
26 that place in the direction of the parking place next to the stadium. Dawid  
27 Tomasz Wozniak got into Mariusz Kozlowski, car, [sic] and Marek  
28 Szymanski got into Piotr Chmielewski's car, and they all drove away from  
Orudusk.

**B. Procedural History (ECF No. 1 pg. 35, 36, 127, 128; ECF Nos. 8, 12)**

21 On January 1, 2008, Andrzej Malinowski, died from head injuries sustained during the  
22 assault that occurred on December 24, 2007.

1 On February 11, 2008, the Polish court issued its decision that Mr. Wozniak should be  
2 charged as an adult despite that he was a 16-year-old minor at the time of the alleged offense.<sup>2</sup>

3 On July 14, 2008, Marek Szymanski was convicted for his part in the assault on Andrzej  
4 Malinowski that occurred on December 24, 2007. He was sentenced to three years' imprisonment.  
5

6 In subsequent proceedings, Mr. Wozniak was charged for his alleged involvement in the  
7 assault on Andrzej Malinowski that occurred on December 24, 2007.<sup>3</sup>

8 On March 3, 2009, Polish authorities issued an arrest warrant for Mr. Wozniak.

9 On March 16, 2009, Polish authorities learned that Mr. Wozniak was residing in the United  
10 States and was aware of his address in Modesto, California.  
11

12 On September 1, 2011, Poland formerly requested the extradition of Mr. Wozniak.

13 Due to repeated deficiencies in its extradition request, Poland sent supplemental letters to  
14 the U.S. Department of Justice on March 20, 2014, August 14, 2018, and October 8, 2019.

15 On February 17, 2022, a criminal complaint against Mr. Wozniak was filed in U.S. District  
16 Court, Eastern District of California. On this same date, the Honorable Kendall J. Newman, Chief  
17 Magistrate Judge, issued an arrest warrant for Mr. Wozniak.  
18

19 On February 22, 2022, Mr. Wozniak was arrested by the U.S. Marshals Service. Mr.  
20 Wozniak has been detained since his arrest pending further extradition proceedings.  
21  
22  
23  
24

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25 <sup>2</sup> Minors 15 years and older should be held liable as adults only where "...the circumstances of the case and the  
26 mental state of development of the perpetrator, his characteristics and personal situation warrant it..." Crim. Code  
27 of Poland, Article 156 § 2.

28 <sup>3</sup> Polish authorities determined that Mr. Wozniak, because of his minor status, could not be held liable for his  
alleged participation in the assault of Szymon Rutkowski.

III.

**THE EVIDENCE CONTAINED IN THE EXTRADITION REQUEST IS INSUFFICIENT  
TO SUPPORT A FINDING OF PROBABLE CAUSE AS TO THE CHARGED OFFENSE**

The federal probable cause standard applies in this case. That is, whether the evidence is *“sufficient to cause of person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused’s guilt.”*<sup>4</sup> Although the federal rules of evidence do not apply in extradition cases, mere conclusory allegations are inadequate to establish probable cause.<sup>5</sup> Further, the government must introduce evidence on each essential element of the charge.<sup>6</sup>

## A. The Evidence Contained in the Extradition Request

Described below is the evidence contained in the extradition request, upon which the government relies on as establishing probable cause, and Mr. Wozniak's explanation and reply to each item of evidence:

1. Certified copy of the charging document (ECF No. 1 pg. 124)

Reply:

The charging document does not contribute to the finding of probable cause. The document's purpose is not to set forth or establish probable cause but merely to set forth the formal charge and bare facts in support of the charge.

<sup>4</sup> *In re Extradition of Atta*, 706 F. Supp. 1032, 1050 (E.D.N.Y. 1989) (quoting *Coleman v. Burnett*, 477 F.2d 1187, 1202 (D.C. Cir. 1973)).

<sup>5</sup> *In re Extradition of Garcia*, 188 F. Supp. 2d 921, 932 (N.D. Ill. 2002).

<sup>6</sup> *In re Extradition of Sauvage*, 819 F. Supp. 896, 901 (S.D. Cal. 1993).

1       2. Certified statement from the Polish prosecutor which summarizes the evidence in  
2       the prosecution case file (ECF No. 1 pg. 34-39), including:

3           a. Summary of the physical evidence, namely, the 59 cm stick. ECF No. 1 pg.  
4           39.

5       Reply:

6       The item of physical evidence is described as a “*stick 59 cm long and with a diameter of 5*  
7       *cm.*” In other words, the stick that was used in the alleged assault that is the subject of the charged  
8       offense measures 23.2 inches long with a diameter of two inches.

9       The item of physical evidence does not contribute to the finding of probable cause as it  
10      cannot be forensically linked to Mr. Wozniak. Specifically, according to the certified statement  
11      from the Polish prosecutor, “*It [the stick] has not been found out during the investigation that any*  
12      *traces originating from Dawid Tomasz Wozniak were found on this piece of evidence.*”

13           b. Statement by witness Szymon RUTKOWSKI, who stated that “he had  
14      come to Grudusk on 24th December 2007 more or less at 23:47 hours. . . .  
15      When he was standing in front of [his friend’s] house, two men ran over to  
16      him. One of them was wearing a light short-sleeve shirt. . . . Szymon  
17      RUTKOWSKI was immediately hit with a wooden stick by one of them,  
18      was beaten with hands and kicked by the other perpetrator. . . . Andrzej  
19      MALINOWSKI, who was passing by, saw this and said to the attackers  
20      “what do you want from him?” Then the two men who had assaulted  
21      Szymon RUTKOWSKI ran over to Andrzej MALINOWSKI and started  
22      hitting him with the wooden stick in his head and kicking him all over his  
23      body. During the beating Andrzej MALINOWSKI fell down. Then the  
24      perpetrators ran away. (ECF No. 1 pg. 37).

25       Reply:

26       Mr. Wozniak objects, on the basis of the Rule of Specialty, to the inclusion of the portion  
27      of the statement that refers to the alleged assault on Szymon Rutkowski. The Rule of Specialty  
28      limits evidence in extradition proceedings to evidence pertaining *only* to the charged offense for  
29      which extradition is sought. Treaty Art. 19(1)(a). In this case, the charged offense relates solely to  
30      the alleged assault of Andrzej Malinowski. It is uncontested that Szymon Rutkowski was *not* the

1 victim of the alleged assault that is the subject of the charged offense and for which extradition is  
2 sought. Therefore, Mr. Wozniak respectfully requests that the Court **strike from the record** the  
3 relevant portion of the statement and that it not be considered in the probable cause determination.  
4

5 As for the balance of the statement, it does not contribute to the finding of probable cause  
6 as Mr. Wozniak is never identified as one of alleged suspects of the assault that is the subject of  
7 the charged offense. The witness identifies the suspects only as “two men,” of which “one” was  
8 wearing a “light short-sleeve shirt.” There is no statement as to even the most basic physical  
9 characteristics of the suspects such as their height, weight, race, or hair length and color, or to  
10 specific type and color of clothing worn beyond a “light short-sleeve shirt.”  
11

12       c. **Statement by witness Marek SZYMANSKI, who stated that Wozniak “had**  
13 **taken part in the beating of Szymon RUTKOWSKI, whom he was hitting**  
14 **with a wooden stick, and then saw him holding the wooden stick and**  
15 **standing above the lying man.” Later at trial, SZYMANSKI admitted his**  
16 **own role in the offense, as summarized, he “stated that he was hitting**  
17 **Szymon RUTKOWSKI with a stick together with Dawid Tomasz Wozniak**  
18 **and directly afterwards saw Dawid Tomasz Wozniak holding the wooden**  
19 **stick ad standing above the lying man. He explained that only Dawid**  
20 **Tomasz Wozniak was using the wooden stick.” (ECF No. 1 at pg. 37).**

21       When Polish police were later securing additional photo identifications of  
22 Wozniak in support of the extradition request, SZYMANSKI, positively  
23 identified Wozniak, and gave a certified statement as follows: “On the day  
24 of the incident I went with him to Grudusk. We parked the car at a shop  
25 in Grudusk. I drove with CHMIELEWSKI and Dawid Wozniak with  
26 KOZLOWSKI. I saw how Dawid took some club out of the car and ran  
27 towards the stadium. I ran after Dawid Wozniak. I remember I saw Dawid  
28 Wozniak struggling with some guy. I ran and punched that boy in the face.  
I sat down on the stone wall and covered his head with his hands. Now I  
do not remember if Dawid Wozniak beat the boy with the club. I went up  
to him and asked where he is from. He replied that he was from Kamien.  
At that time, I saw how Dawid Wozniak runs from the first boy. As I turned  
around I saw a man lying and Dawid Wozniak was behind him. I do not  
remember if I saw that Dawid Wozniak hitting him with a wooden club.  
When I passed by this man, he lay motionless. I did not hit him. Only  
Dawid had a wooden club. At the time when the latter victim fell I did not

1           **see any other persons near him except Dawid Wozniak. I clearly saw Dawid**  
2           **Wozniak by the second victim.” (ECF No. 1 pg. 95).**

3           Reply:

4           Mr. Wozniak objects, on the basis of the rule of specialty, to the inclusion of the witness  
5           statement as it refers only to the assault on Szymon Rutkowski. As stated, Szymon Rutkowski is  
6           *not* the victim of the alleged assault that is the subject of the charged offense. Therefore, Mr.  
7           Wozniak respectfully requests that the Court **strike from the record** the witness statement and  
8           that it not be considered in the probable cause determination.

9  
10           Mr. Wozniak also objects, on the basis of the Rule of Specialty, to the inclusion of the  
11           identification evidence. Specifically, the evidence refers merely to “the incident” without  
12           specifying which incident. Given that the identification offered by Marek Szymanski followed his  
13           statement concerning the alleged assault on Szymon Rutkowski, it follows that the incident he  
14           refers to is the assault on Szymon Rutkowski, who is *not* the victim of the alleged assault that is  
15           the subject of the charged offense. Therefore, Mr. Wozniak respectfully requests that the Court  
16           **strike from the record** the identification evidence and that it not be considered in the probable  
17           cause determination.

18  
19           d. **Statement by witness Ewelina RUDNICKA, who stated that when she**  
20           **came out of her house on the night of December 24, “she saw two men**  
21           **running over to Andrzej MALINOWSKI, who had earlier reprimanded**  
22           **them by saying ‘what are you doing, leave him alone.’ The two men started**  
23           **beating Andrzej MALINOWSKI. One of the attackers was [hitting] him**  
24           **with a baseball bat. After a blow Andrzej MALINOWSKI fell down on the**  
25           **pavement and the attackers ran away. (ECF No. 1 pg. 37). At the trial of**  
26           **SZYMANSKI, RUDNICKA testified that she was not able to indicate**  
27           **which of the two men was beating MALINOWSKI with the bat, but she**  
28           **added that one of the attackers was wearing a short sleeve short. (ECF No.**  
                 **1 pg. 38).**

1       Reply:

2       The statement does not contribute to the finding of probable cause as Mr. Wozniak is never  
3 identified as one of alleged suspects. The witness identifies the suspects only as “two men.” There  
4 is no statement as to even the most basic physical characteristics of the suspects such as their height,  
5 weight, race, or hair length and color, or as to specific type and color of clothing worn. Further,  
6 the witness states that “one” of the suspects was hitting the victim without identifying which one.  
7

8       At the subsequent trial three years later, the witness was “not able to indicate” which  
9 suspect was beating the victim. Further, the witness describes the alleged weapon as a “baseball  
10 bat,” when it is actually a stick barely 23 inches long with a diameter of only two inches.  
11

12       e. **Statement by witness Karolina RUDNICKA, who stated that when she was**  
13 **standing next to her house on the night of December 24, two men**  
14 **approached her group, one wearing only a short sleeve shirt and holding a**  
15 **baseball bat. “The men beat up Szymon RUTKOWSKI and then ran over**  
16 **to Andrzej MALINOWSKI. The boy wearing the short-sleeve short was**  
17 **hitting Andrzej MALINOWSKI with the bat in the head. After the blow,**  
18 **Andrzej MALINOWSKI fell down on the pavement.” At the trial of**  
19 **SZYMANSKI, RUDNICKA confirmed in her testimony that “the bat was**  
20 **held by the man dressed in the short-sleeve shirt.” (ECF No. 1 pg. 38).**

21       Reply:

22       The statement does not contribute to the finding of probable cause as Mr. Wozniak is never  
23 identified as one of the alleged suspects. The witness identifies the suspects only as “two men,” of  
24 which “one” was wearing a “short-sleeve shirt.” There is no statement as to even the most basic  
25 physical characteristics of the suspects such as their height, weight, race, or hair length and color,  
26 or as to specific type and color of clothing worn beyond a “short-sleeve shirt.” Further, the witness  
described the alleged weapon as a “baseball bat,” when it is actually a stick barely 23 inches long  
with a diameter of only two inches.  
27  
28

f. Statement by witness Katarzyna GRODECKA, who testified that she was going to midnight mass with the RUDNICKA and Szymon RUTKOWSKI when “two men ran over to them. One of them was wearing a short-sleeve shirt and holding a wooden stick.” She ran away, but later noticed a man lying on the road. ECF No. 1 pg. 38.

## Reply:

The statement does not contribute to the finding of probable cause as Mr. Wozniak is never identified as one of the alleged suspects. The witness identifies the suspects only as “two men,” of which “one” was wearing a “short-sleeve shirt.” There is no statement as to even the most basic physical characteristics of the suspects such as their height, weight, race, or hair length and color, or as to specific type and color of clothing worn beyond a “short-sleeve shirt.”

g. Statement by witness Mariusz KOZLOWSKI, who stated that "he had come to Grudusk together with Dawid Tomasz Wozniak [and another individual] by car. . . . Dawid Tomasz Wozniak came out of the car and started behaving aggressively. He wanted to pull out an elderly man from another car standing at the parking place." One of the group pulled Wozniak away from the man, but Wozniak "took a wooden stick from [one of the cars] and ran in the direction of the bridge." Wozniak "was wearing just a short-sleeve shirt." SZYMANSKI ran with Wozniak. This witness did not give information about the beatings, but stated that when Wozniak returned to the car, he "got into the car with a wooden stick, he was wearing a short-sleeve shirt." ECF No. 1 pg. 38

**Reply:**

Mr. Wozniak objects, on the basis of the Rule of Specialty, to the inclusion of the portion of the statement that refers to an alleged attempted assault on an “elderly man.” It’s uncontested that the unidentified elderly man is *not* the victim of the alleged assault that is the subject of the charged offense. Therefore, Mr. Wozniak respectfully requests that the Court **strike from the record** the relevant portion of the statement and that it not be considered in the probable cause determination.

1 As to the balance of the statement, it does not contribute to the finding of probable cause  
2 as it only contains allegations as to actions by Mr. Wozniak that are not relevant and provide no  
3 probative value in establishing whether or not Mr. Wozniak was one of the suspects in the alleged  
4 assault that is the subject of the charged offense.  
5

6 **h. Statement by witness Piotr CHMIELEWSKI, who stated that he had gone  
7 to Grudusk with the group including Wozniak, and that Wozniak “was  
8 behaving aggressively. He was holding a wooden stick in his hands. He ran  
somewhere, and Marek SZYMANSKI ran with him.” ECF No. 1 pg. 39**

9 Reply:

10 The statement does not contribute to the finding of probable cause as it does not make  
11 reference to the alleged assault that is the subject of the charged offense. It contains only  
12 allegations as to actions by Mr. Wozniak that are not relevant and provide no probative value in  
13 establishing whether or not Mr. Wozniak was one of the suspects in the alleged assault that is the  
14 subject of the charged offense.  
15

16 **i. Statement by witness Arkadiusz BONISLAWSKI, who stated that he had  
17 gone to Grudusk with the group including Wozniak, and that “they were  
18 drinking alcohol together.” This witness claimed he did not remember  
what happened, and that he was asleep in the car. ECF No. 1 pg. 39.**

19 Reply:

20 The statement does not contribute to the finding of probable cause as it does not make  
21 reference to the alleged assault that is the subject of the charged offense. It contains only  
22 allegations as to actions by Mr. Wozniak that are not relevant and provide no probative value in  
23 establishing whether or not Mr. Wozniak was one of the suspects in the alleged assault that is the  
24 subject of the charged offense. Further, the witness “did not remember what happened” and “was  
25 asleep.”  
26

j. Statement by the medical examiner, who provided an opinion that the direct cause of Andrzej MALINOWSKI'S death was "an acute circulation and breathing failure resulting from an injury of the skull and brain. It led to intracranial hypertension syndrome and swelling of the brain and as a consequence to intracranial hypertension syndrome a few days before. The shape and the location of the superficial changes indicates that they occurred as a consequence of a single blow with a hard, oblong, oval object. This tool could be the stick the photograph of which can be found in the files of the case." ECF No. 1 pg. 39.

## Reply:

Mr. Wozniak wishes to express his condolences to the family of Andrzej Malinowski. With all due respect, however, Mr. Wozniak does not contest that Mr. Malinowski suffered a head injury and died several days later. The statement does not contribute to the finding of probable cause as it does not speak to the issue of whether or not Mr. Wozniak was one of the suspects in the alleged assault that is the subject of the charged offense.

3. Certified copy of witness statement and photo identification of Wozniak by Mariusz KOZLOWSKI, who was also present the night of the attack:

On the day of the incident I went along with him to Grudusk. Dawid Wozniak took out of my car a big stick and went somewhere. I guess SZYMANSKI went after him. I have not seen Dawid Wozniak hitting other persons with the club. Dawid came to my car. He probably had that club. He did not tell me what happened. I remember that he was under the influence of alcohol. Earlier I saw him drinking vodka. I last saw Dawid Wozniak on the second day after the incident, when the police apprehended us. (ECF No. 1 pg. 107).

## Reply:

The statement does not contribute to the finding of probable cause as it does not make reference to the alleged assault that is the subject of the charged offense. It contains only allegations as to actions by Mr. Wozniak that are not relevant and provide no probative value in establishing whether or not Mr. Wozniak was one of the suspects in the alleged assault that is the subject of the charged offense. Further, the witness describes the alleged weapon as a “big” stick, when it is actually barely 23 inches long and with diameter of only two inches.

1       4. **Certified copy of witness statement and photo identification by Włodzimierz**  
2       **WOŹNIAK, who was not an eyewitness to the crime, but did make the hearsay**  
3       **observation that “I know as much as all the inhabitants of Pawlow, it is that**  
4       **Dawid Wozniak battered the boy who died, and it was on Christmas Eve of**  
5       **24/25 December 2007 . . .” (ECF No. 1 pg. 111).**

6       Reply:

7       Mr. Wozniak objects to the inclusion of this statement on the basis that it is conclusory and  
8       prejudicial. The witness acknowledges that the witness was *not* an eyewitness to the alleged assault.  
9       Incredibly, however, the witness claims to be able to identify Mr. Wozniak as the perpetrator  
10      because the witness knows “all the inhabitants of Pawlow.” Mr. Wozniak respectfully requests  
11      that the Court **strike from the record** the statement and that it not be considered in the probable  
12      cause determination.

13       5. **Certified copy of witness statement and photo identification of Wozniak by**  
14       **Wiesław OLSZEWSKI, an officer who interrogated Wozniak on the night of**  
15       **the crime, and obtained admissions from Wozniak as follows:**

16       **I interrogated him in the evening and night hours . . . Dawid Wozniak admitted**  
17       **to participating in the battery of one of the victims, and then to participating**  
18       **in the beating of another victim. During the incident Wozniak had a baseball**  
19       **bat, by which he stroked the victims. (ECF No. 1 pg. 99).**

20       Reply:

21       The statement does not contribute to the finding of probable cause as it does not make  
22       reference to the alleged assault that is the subject of the charged offense. The witness claims that  
23       Mr. Wozniak admitted to participating in the battery of “one” of the victims and then to the beating  
24       of “another” victim without ever identifying the victims or incidents. Further, the witness describes  
25       the alleged weapon as a “baseball bat,” when it is actually a stick barely 23 inches long and with  
26       a diameter of only two inches.

27       6. **Certified copy of witness statement and photo identification of Wozniak by**  
28       **Maciej ZOLTEK, an officer who prepared the juvenile detention report and**  
29       **identified Wozniak as the individual he processed in 2007. (ECF No. 1. pg. 91).**

1       Reply:

2       The statement does not contribute to the finding of probable cause as it does not make  
3 reference to the alleged assault that is the subject of the charged offense. The witness merely states  
4 that Mr. Wozniak was the individual he “processed.”  
5

6       **B. Summary of the Evidence**

7       As shown above, the total of the evidence in this case falls well short of supporting a finding  
8 of probable cause. Much of the evidence relied on by the government is inadmissible or irrelevant.  
9 The evidence that does speak directly to the alleged assault that is the subject of the charged offense  
10 is insufficient to identify Mr. Wozniak as one of the two suspects.  
11

12       The government makes the following assertions in concluding that the evidence establishes  
13 probable cause.

14       1. **The extradition request includes corroborating eyewitness statements from  
15       the group of people who were stopped at the house on the way to midnight  
16       mass, all of whom identified the man wearing the short-sleeve shirt as the  
17       attacker with the wooden bat.**

18       Reply:

19       The government’s assertion that evidence of a “man wearing the short-sleeve shirt” is  
20 somehow sufficient to implicate Mr. Wozniak as one of the two suspects in the assault is  
21 preposterous.

22       The witness statements that the government relies on to make this assertion are those from  
23 Syzman Rutkowski, Ewelina Rudnicka, Karolina Rudnicka, and Katarzyna Grodecka. None of  
24 these statements identify Mr. Wozniak by name, physical description, or any other means.  
25

26       2. **The corroborating eyewitness statements of the members of Wozniak’s group,  
27       who all appeared to minimize their own involvement in some ways, but  
28       confirm it was Wozniak who was behaving aggressively, took the bat out of the**

**car, and ran off wearing a distinctive short-sleeve shirt on a December night in Poland.**

### Reply:

That Mr. Wozniak was allegedly behaving aggressively, took the bat out of the car, and ran off into the Polish night wearing a short-sleeve shirt does not advance in any meaningful way the identification of Mr. Wozniak as one of the two suspects in the assault. Also, it is utterly unclear why the government chooses to describe the short-sleeve shirt as “distinctive” when nowhere else in the evidence is it described as anything other than a “short-sleeve shirt.” Also, the “bat” that the government refers to is actually a stick barely 23 inches long with a diameter of only two inches.

The witness statements that the government relies on to make this assertion are those from Mariusz Kozlowski, Piotr Chmielewski, and Arkadiusz Bonislawski. None of these statements make reference to the alleged assault that is the subject of the charged offense. They contain only allegations as to actions by Mr. Wozniak that are not relevant and provide no probative value in establishing whether or not Mr. Wozniak was one of the suspects in the alleged assault that is the subject of the charged offense.

3. Wozniak's friend Szymanski, who went to trial, was still reluctant to implicate Wozniak, but clarified that there was no one else around the victim when he was beaten until he collapsed, and Wozniak was the one holding the bat.

## Reply:

As previously argued, Marek Szymanski's witness statement and identification evidence is inadmissible for purpose of this hearing as it violates the Rule of Specialty. Specifically, the evidence refers only to the assault on Szymon Rutkowski, who is *not* the victim of the alleged assault that is the subject of the charged offense. Mr. Wozniak therefore respectfully renews his

1 request that the Court **strike from the record** Marek Szymanski's witness statement and  
2 identification evidence.

3

4 **4. Wozniak made admissions to one of the officers when he was first detained in**  
5 **Poland, admitting that he had participated in the beating. The beating was**  
6 **found by the medical examiner to be the direct cause of the death of the victim.**

7 Reply:

8 Here, the government is referring to the witness statement of Wieslaw Olszewski, an officer  
9 who questioned Wozniak. As stated previously, the witness claims that Mr. Wozniak admitted to  
10 participating in the battery of "one" of the victims and then to the beating of "another" victim  
11 without ever identifying the victims or incidents. Further, the witness describes the alleged weapon  
12 as a "baseball bat," when it is actually a stick barely 23 inches long with a diameter of only two  
13 inches. As also stated previously, the statement by the medical examiner is irrelevant to the issue  
14 of identifying Mr. Wozniak as one the suspects who participated in the assault on the victim.

15 **C. Conclusion**

16 As shown above, the government relies on inadmissible and irrelevant evidence and week  
17 identification statements to make faulty assertions about the strength of the evidence contained in  
18 the extradition request. By all appearances, the police work in the case was sloppy, at best. This is  
19 seen in the disarray of the evidence and the lack of relevant and substantive witness statements.  
20 Although the investigation may have been poorly conducted, the Court must still objectively  
21 review the evidence *as presented* in the extradition request, including that any inadmissible,  
22 irrelevant, or prejudicial evidence contained therein not be considered in the probable cause  
23 determination.

1 Mr. Wozniak submits that a careful review of the admissible and relevant evidence as it is  
2 contained and presented in the extradition request makes it abundantly clear that it is insufficient  
3 to support a finding of probable cause.  
4

5 **IV.**

6 **THE RULE OF NON-CONTRADICTION DOES NOT PREVENT THE COURT FROM  
7 CONSIDERING EVIDENCE THAT MR. WOZNIAK WAS IMPROPERLY  
8 PROSECUTED AS AN ADULT**

9 The extradition hearing is a fundamental part of the accused's right to be accorded due  
10 process.<sup>7</sup> In this case, the Court has an important role to play in ensuring that the submitted  
11 evidence in the extradition request is sufficiently supported by probable cause to justify Mr.  
12 Wozniak's extradition – a decision that will have far reaching consequences for Mr. Wozniak, his  
13 family, and the community he has called home for the past 14 years.

14 **A. The Scope of the Rule of Non-Contradiction**

15 Mr. Wozniak understands and accepts that the "Rule of Non-Contradiction" (hereinafter  
16 the "Rule") applies in extradition cases. The Rule is generally understood to mean that the defense  
17 may offer evidence to "explain" but not to "contradict" the submitted evidence.<sup>8</sup> However, the  
18 precise scope of the Rule has never been established and can vary. Many courts have been reluctant  
19 to interpret the Rule in its strictest form, and have diligently evaluated the credibility of the  
20

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27 <sup>7</sup> *In re Extradition of Singh*, 123 F.R.D. 108, 125 (D.N.J. 1987); *Sayne v. Shipley*, 418 F.2d 679, 686 (5th Cir. 1969),  
cert. denied, 398 U.S. 903 (1970).

28 <sup>8</sup> *In re Extradition of Sindona*, 450 F. Supp. 672, 685 (S.D.N.Y. 1978).

1 submitted evidence.<sup>9</sup> Courts have also recognized that strict application of the Rule can have  
2 absurd and unjust results.<sup>10</sup>

3 A fair interpretation of the Rule provides the Court with discretion to admit evidence that  
4 ensures a fair decision-making process before official action is taken which impairs a person's life  
5 and liberty.<sup>11</sup> Any fair notion of due process mandates that a judicial proceeding give all parties an  
6 opportunity to be heard on critical and decisive allegations which go to the core of the parties'  
7 claim or defense and to present evidence on the contested facts.<sup>12</sup> That is, the Court has discretion  
8 to receive and review defense evidence that negates a showing of probable cause.<sup>13</sup>

9  
10 Also, under American law, probable cause must be determined on the basis of the "totality  
11 of the circumstances."<sup>14</sup> The plain meaning and understanding of "totality of the circumstances"  
12 dictates that it should not be limited to only the government's evidence but should also include  
13 evidence proffered by the defense.

14  
15 **B. Legal Requirements to be Charged as an Adult Under Polish Law**

16 Pursuant to Polish Penal Code, Article 10, § 1, "*Whoever commits a prohibited act after*  
17 *having attained the age of 17 years shall be liable under the provisions of this Code.*"

18  
19  
20  
21  
22 <sup>9</sup> *In re Extradition of Strunk*, 293 F. Supp. 2d 1117 (E.D. Cal. 2003); *Gill v. Imundi*, 747 F. Supp. 1028, 1041  
23 (S.D.N.Y. 1990); *Quinn v. Robinson*, 783 F.2d 776, 815 (9th Cir. 1986), cert. denied, 479 U.S. 882 (1986); *Shapiro*  
24 v. *Ferrandina*, 355 F. Supp. 563, 572 (S.D.N.Y. 1973).

25 <sup>10</sup> *In re Extradition of Mazur*, No. 06 M 295 (N.D. Illinois 2007) (Court stating, "Certainly, this case comes closer  
26 than any this Court has seen to pointing out the absurdity of the law in this area."); *In re Extradition of Singh*, 170 F. Supp. 2d 982, 994 (E.D. Cal. 2001); *Sandhu v. Burke*, 97 Civ. 4608 (S.D.N.Y. 2000).

27 <sup>11</sup> *In re Extradition of Singh*, 123 F.R.D. 108, 125 (D.N.J. 1987).

28 <sup>12</sup> *Id.*

<sup>13</sup> *In re Extradition of Sindona*, 450 F. Supp. 672, 685 (S.D.N.Y. 1978).

<sup>14</sup> *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)

1 Polish Penal Code, Article 10, § 2, further provides, “*A juvenile, who after attaining the*  
2 *age of 15 years...may be liable under the provisions specified in this Code, if the circumstances of*  
3 *the case and the mental state of development of the perpetrator, his characteristics and personal*  
4 *situation warrant it, and especially when previously applied educational or corrective measures*  
5 *have proved ineffective.*”

6  
7 Finally, Article 42, § 3 of the Act on Proceedings in Juvenile Cases requires an assessment  
8 of the case prior to explanatory proceedings justifying the charging of a minor as an adult.

9 **C. Sixteen-Year-Old Dawid Tomasz Wozniak was Improperly Charged as an Adult**

10 **1. Introduction**

11  
12 It is uncontested that Dawid was a 16-year-old minor at the time of the incident that is the  
13 subject of the charged offense. Following Dawid’s arrest, he was taken to Police Children’s Shelter  
14 in Plock because he could not be taken into custody due to his age.

15  
16 Dawid was subsequently transferred to Family Court in Przasnysz, 3rd Family and Minors  
17 Division, which instituted proceedings in the matter. After holding a hearing, at which Mr.  
18 Wozniak was *not* present, the Family Court handed his case over to the District Public Prosecutor’s  
19 Office in Ciechanow for criminal prosecution as an adult.

20  
21 It was recently discovered by defense counsel in Poland that Dawid was in fact improperly  
22 charged as an adult for the incident that is the subject of the charged offense. See Exhibit A.

23 **2. The Polish prosecutor rejects the court’s decision**

24  
25 Upon receiving the case, the District Public Prosecutor’s Office vigorously disagreed with  
26 the Court’s decision to prosecute Dawid as an adult and immediately challenged the decision in a  
27 complaint date February 18, 2008. See Exhibit B. In the complaint, the prosecutor writes, in  
28 pertinent part, the following:

1       **This is not possible to agree with the court's position. The assessment of the**  
2       **existence of grounds for responsibility of the juvenile, Dawid Wozniak, under**  
3       **Article 10 § 2 of the Polish Penal Code was based on the findings of the**  
4       **investigation, which are very general and do not take into account the grounds for**  
5       **responsibility set out in Article 10 § 2 of the Polish Penal Code. When referring**  
6       **the case to the prosecutor, the court did not analyse the circumstances of the case.**  
7       **It omitted a detailed assessment of the juvenile offender regarding his level of**  
8       **development, characteristics, and personal conditions, limiting itself to stating**  
9       **that didactic measures were applied to the juvenile. From the records of the**  
10       **proceedings, it transpires that Dawid Wozniak was subjected to an obligation to**  
11       **apologise to the victim in the case no. III RNpw 50/07 concerning an act under**  
12       **Article 157 § 2 of the Polish Penal Code. However, this information is only**  
13       **contained in the official memo. The lack of evidence from these proceedings makes**  
14       **it impossible to assess the degree of depravity of the minor. All the more so in the**  
15       **case of pending proceedings, and it can only be assumed that further didactic or**  
16       **corrective measures will be applied to Dawid Wozniak.**

1       **Essential for the application of Article 42 § 3 of the Act on Proceeding in Juvenile**  
2       **Cases is the assessment of the circumstances of the case. Dawid Wozniak**  
3       **committed the criminal acts acting jointly and in concert with a person liable**  
4       **under the Polish Penal Code, who at the present stage of the proceedings has been**  
5       **charged under Article 158 § 1 and 158 § 2 of the Polish Penal Code. The decision**  
6       **of the court of the first instance does not indicate that the evidence makes it**  
7       **possible to unequivocally attribute to the minor such an action which caused**  
8       **bodily injuries to Andrzej Malinowski, resulting in his death (Article 156 § 3 of**  
9       **the Polish Penal Code). This is even more impossible if we consider that on the**  
10       **date of the decision (in case no. Ds 3106/07 /Sp of the District Prosecutor's Office**  
11       **in Ciechanow), the expert did not issue an opinion as to the injuries sustained by**  
12       **Andrzej Malinowski and the mechanism of their occurrence. Therefore, it cannot**  
13       **be indicated that these injuries were caused only by Dawid Wozniak.**

19       Of particular concern is the prosecutor's assertion that the court did not follow the statutory  
20       requirements prior to making its decision to charge Dawid as an adult (e.g., "*The assessment...and*  
21       *findings of the investigation, which are very general and do not take into account the grounds for*  
22       *responsibility set out in Article 10 § 2 of the Polish Penal Code.*"). The prosecutor plainly states  
23       that the court shirked its responsibilities in assessing "the degree of depravity of the minor" (e.g.,  
24       "*The court did not analyse the circumstances of the case. It omitted a detailed assessment of the*  
25       *case.*

1 *juvenile offender regarding his level of development, characteristics, and personal conditions,*  
2 *limiting itself to stating that didactic measures were applied to the juvenile.”)*

3       The prosecutor not only asserts that Dawid’s legal protections as a minor were violated,  
4 but also questions the strength of the evidence against him (e.g., “*Dawid Wozniak committed the*  
5 *criminal acts acting jointly and in concert with a person liable under the Polish Penal Code...The*  
6 *decision of the court of the first instance does not indicate that the evidence makes it possible to*  
7 *unequivocally attribute to the minor such an action which caused bodily injuries to Andrzej*  
8 *Malinowski”*)

9       The prosecutor’s complaint continues by questioning the court’s acceptance of an  
10 unverified version of the alleged offense, as follows:

11       **It should be presumed that the court of the first instance accepted the version**  
12 **presented by the minor questioned in the preparatory proceedings, according to**  
13 **which he was the only one who used a wooden baton during the incident. This**  
14 **version was not the only one presented by Dawid Wozniak. Other evidence did**  
15 **not unequivocally verify the minor’s account.**

16       The prosecutor’s complaint also highlights that the court’s initial response to Dawid’s  
17 arrest was not to have him detained at all, as follows (see also Exhibit C):

18       **It should be noted that the course of proceedings indicates that the court of the**  
19 **first instance also had doubts concerning the application of Article 10 § 2 of the**  
20 **Polish Penal Code to Dawid Wozniak since, in its decision of 28 December 2007,**  
21 **it did not find any premises for placing the minor in a juvenile detention centre**  
22 **and ordered that he be released from the police children’s shelter and brought**  
23 **back to his parents.**

24       The court’s decision was ultimately upheld on formal reasons with no response to the  
25 merits of the Prosecutor’s Office’s complaint, including the lack of notification to Dawid  
26 concerning proceedings in the matter. Unfortunately for Dawid, it is now too late to appeal the  
27 court’s improper decision to prosecute him as an adult.

### 3. Conclusion

The complaint by the District Public Prosecutor's Office is a clear and powerful rebuke of the Polish court's conduct in assessing the critical issue of whether or not Dawid should have been prosecuted as an adult, or even at all.

The complaint speaks directly to the critical issue of probable cause that this Court must decide at Dawid’s extradition hearing. The Polish court’s procedural and substantive errors are inextricably linked with the question of the evidence against Dawid. As the Polish prosecutor states, “*Essential for the application of Article 42 § 3 of the Act on Proceeding in Juvenile Cases is the assessment of the circumstances of the case.*” After making this point, and as stated above, the Polish prosecutor then questions whether the evidence is sufficient to attribute the alleged conduct to Dawid. Further, as also stated above, the Polish prosecutor was concerned that the Polish court was too quick to accept an unverified version of events.

Whether the Court decides to review this issue as a due process issue or more squarely as an evidentiary probable cause issue, or perhaps a hybrid of both, the inescapable conclusions is the same: Had the Family Court conducted a proper assessment of Dawid and the circumstances of the offense, it's likely that Dawid would not have been charged, or at worst charged as a minor, either of which negates the possibility of his extradition. There is no evidence in the record that supports Dawid was properly charged as an adult un Polish law and requirements, either through proper procedural measures or based on the sufficiency of the evidence against him.

As previously stated, it is within the authority and discretion of this Court to ensure a fair decision-making process before official action is taken which impairs a person's life and liberty. Clearly, the decision to prosecute Dawid as an adult was done unfairly and based on insufficient

1 evidence. And it is solely due to that decision and failed process that Mr. Wozniak's liberty is now  
2 threatened.

3 It is urged that the Court act to correct this injustice and not delegate its authority to the  
4 Department of State on the chance that the Department will not surrender Dawid to Polish  
5 authorities. It is well understood that certified extraditions are routinely surrendered unless the  
6 person or the alleged conduct touches political spheres of influence, which is clearly not the case  
7 here.

8  
9 **V.**

10  
11 **CONCLUSION**

12 As detailed and set forth in this memorandum, the evidence contained in the extradition  
13 request is insufficient to support a finding of probable cause as to the charged offense that is the  
14 subject of the extradition request. As shown, the government relies on inadmissible and irrelevant  
15 evidence and weak identification statements to make faulty assertions about the strength of the  
16 evidence contained in the extradition request. Mr. Wozniak submits that a careful review of the  
17 admissible and relevant evidence as it is contained and presented in the extradition request makes  
18 it abundantly clear that it is insufficient to support a finding of probable cause. Therefore, Mr.  
19 Wozniak respectfully requests that the Court not certify the extradition request as it is not  
20 sufficiently supported by probable cause.

21  
22 That Mr. Wozniak was improperly charged as an adult only further supports the negation  
23 of probable cause and the non-certification of the extradition request. As explained, the Rule of  
24 Non-Contradiction does not prevent the Court from considering evidence set forth in this  
25 memorandum that Mr. Wozniak was improperly prosecuted as an adult.

1 As such, for all the reasons set forth in this memorandum, Mr. Wozniak prays for  
2 compassion and understanding from the Court, and that the Court exercise its discretion and not  
3 certify the extradition request.  
4

5  
6 Dated: May 31, 2022

*/s/ Joseph Abrams*  
Joseph Abrams

7  
8 Dated: May 31, 2022

*/s/ Ryan T. Okabe*

Ryan T. Okabe

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Attorneys for Defendant

## CERTIFICATE OF SERVICE

I, JOSEPH ABRAMS, declare:

That I am a citizen of the United States and resident of or employed in Orange County, California; that my business address is Law Office of Joseph Abrams, 2800 E. Katella Avenue, Suite 800, Anaheim, California 92806; that I am over the age of eighteen years; and I am not a party to the above-entitled action.

That I am an attorney and member of the bar of the State of California and of the United States District Court for the Eastern District of California, and that on this date, I served a true and correct copy of the attached **DEFENDANT'S MEMORANDUM IN OPPOSITIOIN OF CERTIFICATION OF EXTRADITION AND RESPONSE TO GOVERNMENT'S MEMORANDUM** by electronically filing same with the Clerk of the District Court using it's CM/ECF system, which electronically notifies counsel for that party as follows:

**Audrey B. Hemesath  
Assistant United States Attorney**

This Certificate is executed on this date at Anaheim, California. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: May 31, 2022

*/s/ Joseph Abrams*

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Joseph Abrams  
Attorney for Defendant